HARVARD LAW REVIEW.

Published monthly, during the Academic Year, by Harvard Law Students.

SUBSCRIPTION PRICE, $2.50 PER ANNUM. . . . . 35 CENTS PER NUMBER.

THE LAW SCHOOL. — The Law School opens with an entering class of about the same number as last year. Full statistics will as usual appear in the December issue.

In the last annual report to the Board of Overseers the Committee on the Law School recommended especially that the staff of instructors be increased, that the number of students in the classes be diminished, and that more attention be paid to common-law pleading. It is interesting in this connection to note the changes in the curriculum. Professor Brannan, who has been a practising lawyer in Cincinnati, and for the last two years a professor in the Cincinnati Law School, will give the courses on Partnership and Bills and Notes. The Bemis Professorship of International Law, founded five years ago, becomes a reality in the hands of Professor Strobel, late Minister of the United States to Chili, who has also filled a number of other diplomatic positions. Thanks to the kindness of the Harvard Law School Association, the School this year has the unusual advantage of a series of lectures by Professor Dicey, Vinerian Professor of Law in Oxford University. One of the most gratifying announcements is that of Professor Williston's return. He will take the new course on Bankruptcy this year, and there seems every prospect that next year he will resume his full classes. Mr. Swift, a practising lawyer in Boston, and for several years United States Marshal, takes the course on Sales. Mr. Westengard, LL.B., 1898, will conduct the course on Pleading, and will take charge of three of the sections in Criminal Law. Professor Williams has resigned his chair, and Property II will be again conducted by Mr. Dodge. The course on Roman Law will be omitted. The new course on Patents will be given by Mr. Storrow, of the firm of Fish, Richardson, & Storrow. Damages, omitted last year, returns to the active list, as does New York practice. The Bail Courts, which were started last year to give practice in pleading, will be continued. Constitutional Law has become a three-hour course, and Carriers is increased

to two hours. Pleading, Property I, Torts, Bills and Notes, and Evidence are divided this year into two sections; Criminal Law has four divisions. On the whole, then, there appears to be a general development in the directions recommended by the Committee of the Board of Overseers.

GOVERNMENT OF TERRITORIES AND COLONIES. — The most important legal question brought into prominence by the war with Spain regards the attitude of the Federal Constitution towards government of newly acquired Territories. One branch of this question is wholly unsettled. In passing laws for Hawaii and for Porto Rico, is Congress to keep within the letter of the amendments, and the similar provisions of the Constitution itself, or is it free to establish whatever colonial system it sees fit? Two cases, oddly enough, have arisen during the year in regard to previously existing Territories which throw light upon the matter. In one of them the court had to pass upon the constitutional right of a criminal in the Territories to a trial by twelve jurors. *Thompson* v. *State of Utah*, 18 Sup. Ct. Rep. 620. The defendant committed larceny in Utah before it was admitted to the Union as a State. After Utah became a State he was tried and convicted by eight jurors, in accordance with a provision in the Utah constitution. If the prisoner had been entitled to a trial by twelve jurors when he committed the crime, the provision in the Utah constitution would, so the court held, be *ex post facto*, and void as regarded him. The court decided that the Sixth Amendment, guaranteeing a trial by twelve jurors, did extend to Utah as a Territory, and hence that the trial was invalid. The reasoning was comprehensive, and would seem at first sight to settle the question. But since a United States statute expressly extended the Federal Constitution to the Territory of Utah, the opinion of the court is merely an addition to the line of *dicta* that are to the same effect.

Another case, decided in the Circuit Court of Appeals, tends in the opposite direction. *Endleman* v. *United States*, 86 Fed. Rep. 456 (C. C. A. Ninth Cir.). The question was whether or not certain restrictive liquor legislation for Alaska was constitutional. The objection, among others, was made that the law amounted to a deprivation of property, and was therefore invalid. The court answered, not that this objection was based upon a misconception of the Fifth Amendment, — which would have been a very good answer, and herein lies the weakness of the decision, — but that this argument found its refutation in the fact that Alaska was not formed under the general terms of the Constitution, and that the law in question was justified by the full power of Congress over the Territories.

The point of difference is clear. Alaska and Utah may indeed be distinguished on the ground that when Congress formed the territorial government of Utah and admitted a representative, by that act, even in the absence of an express statute, it extended the constitutional provisions to Utah. In the case of Alaska no such extension has been made. Alaska would thus be the basis by which to judge Porto Rico. No distinction of this sort, however, is hinted at in the Supreme Court decisions, and it is not likely to be made. The probability is that the *dicta*, of which the Utah case gives an example, will be followed and applied to the colonies. Yet it is not too late to point out that there is no authority which has given at all an adequate treatment to the matter. Mr. Justice Bradley himself